

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

NELSON J. DEL ROSARIO

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

CIVIL NO. 06-1110 (JAF)

**REPORT AND RECOMMENDATION**

Petitioner's Section 2255 motion (Docket No. 1) must be **DENIED** and **DISMISSED**. The very issue now raised before this Court was previously rejected on direct appeal. See United States v. Del Rosario, 388 F. 3d 1, 12 n. 6 (1<sup>st</sup> Cir. 2004). There, as here, petitioner claimed that he did not consent to the search of his baggage — a suppression issue. Specifically, he contends that DEA special agent Laboy was not present during his arrest and consent search, as alleged by the government, hence, rendering the search unlawful.

The record on appeal, see note 6 ante, belies such assertion, which rests on a credibility and weight of the evidence determination.

A petitioner may not relitigate in a Section 2255 collateral attack factual issues previously raised and rejected at trial, and, later, one direct appeal. See Davis v. United States, 417 U.S. 333, 342 (1974); Singleton v. United States, 26 F. 3d 233, 240 (1<sup>st</sup> Cir. 1993). This established norm must be followed accordingly as Section 2255 is not a vehicle to reassess issues of credibility and weight of the evidence, except in those circumstances where the Court's findings are clearly erroneous. See Familia Consoro v. United States 160 F. 3d 761, 765 (1<sup>st</sup> Cir. 1990) (citing Strickland v. Washington, 466 U. S. 668, 698 (1984)).

Under the provisions of 28 U.S.C. § 636 and Local Rule 72(d), District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111(1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1<sup>st</sup> Cir. 1992).

**SO RECOMMENDED.**

Date: March 14, 2006

*St. Gustavo A. Gelpi*  
GUSTAVO A. GELPI  
United States Magistrate Judge